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REPOSSESSION SPECIALIST, INC.

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

JOSEPHINE THORNTON.

Plaintiff.

V

ABA RECOVERY SERVICE, INC.,
REPOSSESSION SPECIALISTS,
PAR, INC. dba PAR NORTH
AMERICA, FIRST ASSOCIATES
LOAN SERVICING, LLC dba MEGA
AUTO FINANCE, and DOES 1
through 10, inclusive.

Defendants

CASE NO.: 15CV1971 CAB KSC

**ANSWER ON BEHALF OF
DEFENDANT REPOSSESSION
SPECIALIST, INC. TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT**

District Judge: Hon. Cathy Ann
Bencivengo / Courtroom 4C

Magistrate Judge: Hon. Karen S. Crawford

Action Filed: September 3, 2015

Trial Date: Not Yet Assigned

19 Comes now Defendant REPOSSESSION SPECIALIST, INC., (dba ABA
20 Recovery Service) by and through counsel, and in Answer to Plaintiff's First
21 Amended Complaint on file herein, states as follows:

22 1. In answer to paragraph 1, Defendant lacks sufficient knowledge or
23 information to form a belief as to the truth of the allegations contained in
24 paragraph 1 and denies such allegations.

25 2. In answer to paragraph 2, Defendant denies each and every allegation
26 contained in paragraph 2.

27 ||| 3. In answer to paragraph 3. Defendant lacks sufficient knowledge or

1 information to form a belief as to the truth of the allegations contained in
2 paragraph 3 and denies such allegations.

3 4. In answer to paragraph 4, Defendant denies each and every allegation
4 contained in paragraph 4.

5 In answer to paragraph 5, Defendant denies each and every allegation
6 contained in paragraph 5.

7 6. In answer to paragraph 6, admits the jurisdiction allegations in
8 paragraph 6.

9 7. In answer to paragraph 7, Defendant admits the venue allegations in
10 paragraph 7.

11 8. In answer to paragraph 8, Defendant lacks sufficient knowledge or
12 information to form a belief as to the truth of the allegations contained in
13 paragraph 8 and denies such allegations.

14 9. In answer to paragraph 9, Defendant lacks sufficient knowledge or
15 information to form a belief as to the truth of the allegations contained in
16 paragraph 9 and denies such allegations.

17 10. In answer to paragraph 10, Defendant admits the incorporation
18 allegations contained in paragraph 10.

19 11. In answer to paragraph 11, lacks sufficient knowledge or information
20 to form a belief as to the truth of the allegations contained in paragraph 11 and
21 denies such allegations.

22 12. In answer to paragraph 12, Defendant lacks sufficient knowledge or
23 information to form a belief as to the truth of the allegations contained in
24 paragraph 12 and denies such allegations.

25 13. In answer to paragraph 13, Defendant lacks sufficient knowledge or
26 information to form a belief as to the truth of the allegations contained in
27 paragraph 13 and denies such allegations.

14. In answer to paragraph 14, Defendant denies each and every allegation contained in paragraph 14.

15. In answer to paragraph 15, Defendant realleges all responses to paragraphs 1-14 as though fully set herein.

16. In answer to paragraph 16, Defendant denies each and every allegation contained in paragraph 16.

17. In answer to paragraph 17, Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 17 and denies such allegations.

18. In answer to paragraph 18, Defendant denies each and every allegation contained in paragraph 18.

19. In answer to paragraph 19, Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations against ABA Recovery and the Doe Defendants contained in paragraph 19 and denies such allegations. Defendant denies each and every allegation against it contained in paragraph 19.

20. In answer to paragraph 20, Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 20 and denies such allegations.

21. In answer to paragraph 21, Defendant denies each and every allegation contained in paragraph 21.

22. In answer to paragraph 22, Defendant denies each and every allegation contained in paragraph 22.

23. In answer to paragraph 23, Defendant denies each and every allegation contained in paragraph 23.

24. In answer to paragraph 24, Defendant realleges all responses to paragraphs 1-23 as though fully set herein.

1 25. In answer to paragraph 25, Defendant lacks sufficient knowledge or
2 information to form a belief as to the truth of the allegations contained in
3 paragraph 25 and denies such allegations.

4 26. In answer to paragraph 26, Defendant lacks sufficient knowledge or
5 information to form a belief as to the truth of the allegations contained in
6 paragraph 26 and denies such allegations.

7 27. In answer to paragraph 27, Defendant denies each and every
8 allegation contained in paragraph 27.

9 28. In answer to paragraph 28, Defendant denies each and every
10 allegation contained in paragraph 28.

11 29. In answer to paragraph 29, Defendant denies each and every
12 allegation contained in paragraph 29.

13 30. In answer to paragraph 30, Defendant lacks sufficient knowledge or
14 information to form a belief as to the truth of the allegations contained in
15 paragraph 30 and denies such allegations.

16 31. In answer to paragraph 31, Defendant denies each and every
17 allegation contained in paragraph 31.

18 32. In answer to paragraph 32, Defendant denies each and every
19 allegation contained in paragraph 32.

20 33. In answer to paragraph 33, Defendant denies each and every
21 allegation contained in paragraph 33.

22 34. In answer to paragraph 34, Defendant denies each and every
23 allegation contained in paragraph 34.

24 35. In answer to paragraph 35, Defendant denies each and every
25 allegation contained in paragraph 35.

26 36. In answer to paragraph 36, Defendant realleges all responses to
27 paragraphs 1-35 as though fully set herein.

37. In answer to paragraph 37, Defendant denies each and every allegation contained in paragraph 37.

38. In answer to paragraph 38, Defendant denies each and every allegation contained in paragraph 38.

39. In answer to paragraph 39, Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 39 and denies such allegations.

40. In answer to paragraph 40, Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 40 and denies such allegations.

41. In answer to paragraph 41, Defendant denies each and every allegation contained in paragraph 41.

42. In answer to paragraph 42, Defendant denies each and every allegation contained in paragraph 42.

FIRST AFFIRMATIVE DEFENSE

43. Defendant is informed and believes and on that basis alleges that Plaintiff's First Amended Complaint fails to state a claim against Defendant for which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

44. Defendant is informed and believes and upon such information and belief alleges that at all times mentioned herein, if any Defendant was negligent, the conduct of all other parties, both known and unknown, should be compared to determine the degree of fault, if any, between the parties.

THIRD AFFIRMATIVE DEFENSE

45. Defendant is informed and believes and upon such information and belief alleges that at all times mentioned herein, Plaintiff was negligent, careless and reckless and unlawfully conducted herself so as to substantially contribute to

1 Plaintiff's alleged injuries and damages compared to the conduct of all other
2 parties, all of which said negligence either bars in whole or in part damages sought
3 herein.

4 **FOURTH AFFIRMATIVE DEFENSE**

5 46. Defendant is informed and believes and upon such information and
6 belief alleges that at the time and place of the incident alleged in Plaintiff's First
7 Amended Complaint, the Plaintiff knew of the danger and risk incident to the
8 undertaking, but despite such knowledge, Plaintiff freely and voluntarily assumed
9 and exposed herself to all risk of harm and the consequential injuries and damages,
10 if any, therefrom.

11 **FIFTH AFFIRMATIVE DEFENSE**

12 47. Defendant is informed and believes and thereon alleges that in the
13 event Plaintiff should establish any liability on the part of this answering
14 Defendant, which liability is expressly denied, this answering Defendant may not
15 be obligated to pay sums representing a proportion or percentage of fault not
16 his/her own, but that of Plaintiff, other parties to this action and third persons not
17 parties to this action. Defendant is entitled to an adjudication and determination of
18 the respective proportions or percentages of fault, if any, on this answering
19 Defendant's part and on the part of the Plaintiff and other parties to this action and
20 third persons not parties to this action pursuant to the Doctrines of Comparative
21 Negligence and the Fair Responsibility Act of 1986, codified in Civil Code §1431-
22 1431.5.

23 **SIXTH AFFIRMATIVE DEFENSE**

24 48. Defendant is informed and believes and thereon alleges that at all
25 times mentioned herein, if any defendant was negligent, co-defendants, both
26 known and unknown, were negligent, careless and reckless and unlawfully
27 conducted themselves so as to substantially contribute to Plaintiff's injuries,
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1 damages and losses, and said negligence, if any, either bars in whole or in part
2 damages sought herein against this answering defendant.

3 **SEVENTH AFFIRMATIVE DEFENSE**

4 49. Defendant is informed and believes and thereupon alleges that its
5 action or inaction was not the sole, legal or proximate cause of the incidents upon
6 which liability is based or damages awarded, if any, and that damages awarded, if
7 any, must be apportioned according to the respective fault of all parties, persons or
8 entities, or their agents, servants and employees, whether or not parties to this
9 litigation, who contributed to or caused the incidents or damages alleged in the
10 First Amended Complaint.

11 **EIGHTH AFFIRMATIVE DEFENSE**

12 50. This answering Defendant is informed and believes and thereon
13 alleges that the negligence, if any, of this answering Defendant was not a
14 substantial factor in bringing about the Plaintiff's alleged injuries and damages,
15 and therefore was not a contributing cause thereof, but was superseded by the
16 negligence of others, whose negligence was an independent, intervening,
17 superseding and a proximate cause of any injury or damage suffered by the
18 Plaintiff.

19 **NINTH AFFIRMATIVE DEFENSE**

20 51. Defendant is informed and believes and upon such information and
21 belief alleges that Plaintiff has failed to mitigate the damages referred to in the
22 First Amended Complaint, barring relief, in whole or in part, as to this answering
23 Defendant.

24 **TENTH AFFIRMATIVE DEFENSE**

25 52. This answering Defendant is informed and believes and thereon
26 alleges that Plaintiff's claims are barred by Plaintiff's own willful misconduct.

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1 **ELEVENTH AFFIRMATIVE DEFENSE**

2 53. This answering Defendant is informed and believes and thereon
3 alleges that Plaintiff's claims are barred by the doctrine of estoppel.

4 **TWELFTH AFFIRMATIVE DEFENSE**

5 54. This answering Defendant is informed and believes and thereon
6 alleges that Plaintiff's claims are barred by the doctrine of waiver.

7 **THIRTEENTH AFFIRMATIVE DEFENSE**

8 55. This answering Defendant is informed and believes and thereon
9 alleges that the First Amended Complaint and the averments thereof are uncertain,
10 vague and ambiguous.

11 **FOURTEENTH AFFIRMATIVE DEFENSE**

12 56. This answering Defendant is informed and believes and thereon
13 alleges that the First Amended Complaint and every cause of action contained
14 therein, is barred by the provisions of California Code of Civil Procedure Sections
15 337, 337.1, 337.15, 338, 339, 339.5, 340, 342, 343, as well as Civil Code Section
16 2079.4, and any and all other applicable statutes of limitation.

17 **FIFTEENTH AFFIRMATIVE DEFENSE**

18 57. This answering Defendant is informed and believes and thereon
19 alleges that Plaintiff has voluntarily engaged in wrongful and bad faith conduct and
20 activities with respect to the matters and transactions referred to in the First
21 Amended Complaint herein, barring any and all relief against this answering
22 Defendant under the doctrine of unclean hands.

23 **SIXTEENTH AFFIRMATIVE DEFENSE**

24 58. This answering Defendant is informed and believes and thereon
25 alleges that Plaintiff's claims that Defendant engaged in unfair debt collection
26 practices in violation of the Fair Debt Collections Practices Act and California
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1 Civil Code §§1788, et seq., are barred by other provisions of Federal and
2 California State law.

SEVENTEENTH AFFIRMATIVE DEFENSE

4 59. This answering Defendant is informed and believes and thereon
5 alleges that Plaintiff has failed to plead with particularity the circumstances
6 constituting the alleged fraud and/or misrepresentation.

EIGHTEENTH AFFIRMATIVE DEFENSE

8 60. This answering Defendant is informed and believes and thereon
9 alleges that Plaintiff has engaged in conduct and activities, pursuant to which she
10 has waived any and all claims and/or causes of action she may have against this
11 answering Defendant.

NINETEENTH AFFIRMATIVE DEFENSE

13 61. This answering Defendant is informed and believes and thereon
14 alleges that Plaintiff has engaged in conduct and activities by reason of which she
15 is estopped to assert any claim or cause of action against this answering Defendant.

TWENTIETH AFFIRMATIVE DEFENSE

17 62. This answering Defendant is informed and believes and thereon
18 alleges that Plaintiff has not suffered any injury or damage whatsoever, and further
19 denies that Defendant is liable to Plaintiff for any injury or damage whatsoever.

TWENTY-FIRST AFFIRMATIVE DEFENSE

21 63. This answering Defendant is informed and believes and thereon
22 alleges that this Defendant has met all appropriate standards for professional
23 conduct according to all rules promulgated in the Business and Professions and
24 Civil Code Sections.

TWENTY-SECOND AFFIRMATIVE DEFENSE

26 64. This answering Defendant is informed and believes and thereon
27 alleges that the Plaintiff's claims are barred, because the alleged acts of Defendant,

1 forming the basis of the First Amended Complaint, were lawful, explicitly
2 approved and/or exempt from prosecution.

3 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

4 65. This answering Defendant is informed and believes and thereon
5 alleges that Plaintiff's claims are barred, in whole or in part, because Defendant, at
6 all times, acted in good faith and did not directly or indirectly perform any act
7 whatsoever that would constitute a violation of any right of Plaintiff's or any duty
8 owed to Plaintiff.

9 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

10 66. This answering Defendant is informed and believes and thereon
11 alleges that the alleged representations are not actionable statements of fact under
12 applicable law.

13 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

14 67. This answering Defendant denies each and every claim of Plaintiff
15 and denies that Defendant engaged in any wrongdoing or error of any kind.
16 However, should any alleged error be identified, then Plaintiff's claims are barred
17 because any alleged error on Defendant's part was a bona fide error
18 notwithstanding Defendant's use of reasonable procedures adopted to avoid any
19 such error.

20 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

21 68. This answering Defendant is informed and believes and thereon
22 alleges that Plaintiff has failed to set forth facts sufficient to support an award for
23 attorneys' fees.

24 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

25 69. This answering Defendant is informed and believes and thereon
26 alleges that it is entitled to the reasonable value of its attorneys' fees, costs of suit
27 and other litigation expenses incurred in the defense of this action.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

70. This answering Defendant is informed and believes and thereon alleges that the First Amended Complaint and the purported causes of action alleged therein fail to set forth facts sufficient to allow for recovery of punitive or exemplary damages from Defendant.

TWENTY-NINTH AFFIRMATIVE DEFENSE

71. This answering Defendant is informed and believes and thereon alleges that the First Amended Complaint, to the extent it seeks punitive or exemplary damages, violates the rights of Defendant to procedural and substantive due process under the Fourteenth Amendment to the United States Constitution and under the Constitution of the State of California.

THIRTIETH AFFIRMATIVE DEFENSE

72. This answering defendant alleges that plaintiff lacks the standing to bring suit against this answering defendant before this Court.

THIRTY-FIRST AFFIRMATIVE DEFENSE

73. This answering defendant alleges that the negligent actions of others constitute superseding, intervening causes of Plaintiff's alleged injuries and/or damages.

THIRTY-SECOND AFFIRMATIVE DEFENSE

74. This answering defendant alleges that Plaintiff's First Amended Complaint and each purported cause of action therein are barred by the doctrines of express and implied consent by Plaintiff.

THIRTY-THIRD AFFIRMATIVE DEFENSE

75. This answering Defendant is informed and believes and thereon alleges that the Plaintiff's First Amended Complaint, and each cause of action therein, is stated in conclusory terms, and therefore said Defendant cannot fully anticipate all affirmative defenses which may be applicable to this action.

1 Accordingly, this answering Defendant reserves the right to add additional
2 affirmative defenses.

3 WHEREFORE, this answering Defendant prays judgment against Plaintiff
4 as follows:

- 5 1. That Plaintiff take nothing by way of the First Amended Complaint;
6 2. That Judgment be entered in favor of Defendant and against Plaintiff
7 on all causes of action;
8 3. For attorneys' fees and costs of suit incurred herein; and
9 4. For such other and further relief as the Court may deem just and
10 proper.

11
12 Dated: February 2, 2016

FARMER CASE & FEDOR
By:

13
14 /s/ Anthony T. Case _____
15 ANTHONY T. CASE, ESQ.
16 MICHELE M. ANGELES, ESQ.
17 OLIVIA MINER, ESQ.
18 Attorneys for Defendant
19 REPOSSESSION SPECIALIST, INC.

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Case Name: Thornton v. ABA Recovery Service, Inc., et al.
Southern District Court of California: 15CV1971 CAB KSC

DECLARATION OF SERVICE

I hereby declare as follows:

I am, and was at the time of service of the papers referred to herein, over the age of eighteen (18) years, not a party to the action, and employed in the County of San Diego, State of California. My business address is 402 W. Broadway, Suite 1100, San Diego, California 92101.

I caused to be served the following document(s):

**ANSWER ON BEHALF OF DEFENDANT REPOSSESSION
SPECIALIST, INC. TO PLAINTIFF'S FIRST AMENDED
COMPLAINT**

of which THE ORIGINAL DOCUMENT OR A TRUE AND CORRECT COPY is attached hereto, addressed to each such addressee respectively as follows:

Alexander B. Trueblood, Esq.
Trueblood Law Firm
10940 Wilshire Blvd., Ste. 1600
Los Angeles, CA 90024
(310) 443-4139 / Fax: (310) 943-2255
alec@hush.com
COUNSEL FOR PLAINTIFF
JOSEPHINE THORNTON

BY CM/ECF: I electronically filed the foregoing document(s) with the Clerk of the Court using the CM/ECF system, which will send an email notification of such filing to the person(s) so designated above.

BY E-MAIL: I caused said document(s) to be delivered via electronic mail (e-mail) to the person(s) so designated above.

BY U.S. MAIL: I placed each sealed, prepaid envelope for collection and mailing at 402 W. Broadway, San Diego, California, 92101. I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service pursuant to which practice the correspondence will be deposited with the United States Postal Service this same day in the ordinary course of business.

BY FACSIMILE: I caused said document(s) to be transmitted by facsimile transmission. The name(s) and facsimile machine telephone number(s) of the person(s) served are set forth above. The sending facsimile machine properly issued a transmission report confirming that the transmission was complete and without error.

BY OVERNIGHT MAIL: I caused said document(s) to be deposited in a box or other facility regularly maintained by an express service carrier providing overnight delivery in an envelope or package designated by the express service carrier with delivery fees paid or provided.

1 **BY PERSONAL SERVICE:** I caused such document(s) to be hand-delivered to
2 the person(s) served hereunder. A separate Proof of Personal Service will be
provided.

3 I declare under penalty of perjury under the laws of the State of California
4 that the foregoing is true and correct. Executed February 2, 2016.
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/s/ Christina Fedor
Christina Fedor